

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1045 OF 2003

Pradeep Raghunath Bavadekar
V/s.
S.N. Sayed and anr.

.....Petitioner
.....Respondents

ALONGWITH
WRIT PETITION NO. 1046 OF 2003

Pradeep Raghunath Bavadekar
V/s.
Shri. D.N. Mirajkar and anr.

.....Petitioner
.....Respondents

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Mr. R.D. Soni a/w. Mr. V.R. Kasle i/by. M/s. Ram & Co., Advocate
for the petitioner.

Mr. S.R. Agarkar, APP for State in WP-1045-2003.

Ms. N.S. Jain, APP for State in WP-1046-2003.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 7TH MARCH, 2017.

P.C. :-

1). This is a common order on the above two writ petitions which are filed by the same petitioner and arise out of identical proceedings. The petitioner is one of the Directors of M/s. Dhariwal Industries Limited ("The Company" for short). He was appointed as a nominee director of Indian Renewable Energy Development Agency Ltd., (IREDA) incorporated under Section

4(e) of the Companies Act, 1956. The petitioner is also the Managing Director of MITCON which is an Institutional Consultancy Organisation and a Business Development Association of IREDA. On 16th July, 2001 at 3.00 p.m. one panch witness visited the shop of M/s. Nehal Store, Pen, Dist-Raigad and purchased 3 packed cartons of Manikchand Gutkha each weighing 175 gms. On the same day, another Panch witness at 5.00 p.m. visited M/s. Hari Sales Agency also at Pen, Raigad for picking up samples of the same Gutka. On the next date i.e. 17th July, 2002 respondent no.1 sent the samples of gutka to public analyst for testing. The report of the public analyst stated that the sample did not conform to the standards of Gutka as per the Prevention of Food Adulteration Rules, 1955. Thereafter, consent of the Joint Commissioner (Konkan Division) Food and Drug Administration, Thane was obtained and complaint bearing no. No.45 of 2002 and complaint bearing no. 102 of 2002 were filed against The Company, its Directors including the petitioner herein and others. By the order dated 26th March, 2002 and 31st October, 2002 respectively the learned Magistrate directed issuance of process against the petitioner. Being aggrieved by the order, the petitioner has approached this Court.

2). Mr. Soni, the learned Advocate appearing for the petitioner, submits that, the petitioner being a nominee Director cannot be prosecuted for the offences alleged to have been committed by The Company since he is not concerned with the day-to-day functioning of the Company. He is on the Board of Directors merely as a Representative of the Financial Institution which is a

private financier of The Company. He refers to Section 25 of the Industrial Finance Corporation Act, 1948 which provides for power to impose conditions for giving financial accommodation to Companies. It provides that the Finance Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Corporation and for ensuring that the accommodation granted by it is put to the best use by the Industrial Concern. Section 25(3)(a) provides that any director appointed in pursuance of sub-section (2) shall, hold office during the pleasure of the Corporation and may be removed or substituted by any person by order in writing by the Corporation. Section 25(b) provides that any director so appointed shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto. Section 25(c) provides that the any director so appointed shall not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement. These provisions make it abundantly clear that the director so appointed is not the director in usual sense of term. His position is different and unique. It is more like a watchdog on the financial aspects of the Company. He is not concerned with the day to day functioning of the Company. Thus, the provisions being absolutely clear, there could be no prosecution of the petitioner by way of vicarious liability under the Prevention of Food and Adulteration Act. It is not disputed by the prosecution that, the petitioner is a nominee Director and a Representative of IREDA. Hence, the petitions are

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Tuesday, 7.3.2017

allowed in terms of prayer clause (a).

(SMT. R.P. SONDURBALDOTA, J)